IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

OP.No. 8720 of 2001(K)

PETITIONER:
----

1. **T.K. SURENDRAN,**
   S/O. CHATHUKUTTY, AGED 40 YRS,
   HEADMASTER, PULLIODE WEST L.P. SCHOOL,
   P.O. UMMENCHIRA, THALASSERY- 670 649.

2. **P.A. AJITH KUMAR, S/O. P.V. MADHAVA KURUP,**
   AGED 40 YRS, PARIMADOM L.P. SCHOOL,
   P.O. NEW MAHE- 673 311.

3. **M.VENUGOPALAN,**
   S/O. M.K. GOVINDAN NAIR, AGED 42 YRS,
   KAVUMBHAGOM L.P. SCHOOL, THALASSERY
   NORTH, KANNUR- 670 110.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:
----

1. **THE SECRETARY TO GOVERNMENT,**
   GENERAL EDUCATION DEPARTMENT,
   SECRETARIAT, TRIVANDRUM.

2. **THE DEPUTY DIRECTOR OF EDUCATION, KANNUR.**

3. **THE ASSISTANT EDUCATIONAL OFFICER,**
   THALASSERY NORTH.

4. **THE ASSISTANT EDUCATIONAL OFFICER,**
   THALASSERY SOUTH.

BY GOVERNMENT PLEADER SRI. SANDESH RAJA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO. 13920/2001 IN OP NO. 8720/2001 K.

DISMISSED

21/02/2007. **SD/- ANTONY DOMINIC, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER NO.K.DIS 2798/88 OF THE R3 DT. 7/6/88.

EXT.P2. COPY OF THE APPOINTMENT ORDER OF THE P2 DT. 16/2/87.

EXT.P3. COPY OF THE ORDER NO. L.DIS 2279/87 OF THE R3 DT. 20/6/87.

EXT.P4. COPY OF THE GO P NO. 127/99/G.EDN OF THE GOVERNMENT DT. 4/6/99.

EXT.P5. COPY OF THE GO P NO. 129/99/G.EDN OF -DO- DT. 8/6/99.

EXT.P6. COPY OF THE ORDER NO. 60089/P3/99/G.EDN OF THE GOVERNMENT DATED 16/12/2000.

EXT.P7. COPY OF THE GOVERNMENT LETTER NO. 23815/J1/88/G.EDN OF THE GOVERNMENT DT. 09/5/88.

EXT.P8. COPY OF THE GO MS NO. 63/89/G.EDN OF THE GOVERNMENT DT. 8/6/89.

EXT.P9. COPY OF THE DECISION REPORTED IN 1998(2) ILR (KER.) 771 DT. 19/12/97.

[True copy]

tga

ANTONY DOMINIC, J.

O.P NO. 8720 OF 2001

Dated this the 21th day of February, 2007

J U D G M E N T

Although this writ petition has been filed by three petitioners, during the course of the hearing, counsel submits that the first petitioner has no surviving grievance and therefore his submissions were confined to the reliefs that are sought by petitioners 2 and 3. It is submitted that by Exhibit P2, the 2nd petitioner was appointed as Headmaster w.e.f.16/2/87. It is stated that subsequently he was reverted and was allowed to continue as teacher in charge which was also approved by the Department. In so far as the 3rd petitioner is concerned, though he was also appointed as Headmaster w.e.f. 1/6/87, by Exhibit P3 order, request for approval was rejected by the Assistant Educational Officer. It is submitted that subsequently, his appointment as teacher in charge was approved w.e.f. 1/6/87. According to petitioners 2 and 3, there was no qualified teacher to be promoted as Headmaster and therefore, they continued as teachers-in-charge in their respective schools. In the meantime,

they acquired test qualification prescribed in Rule 45 (B) of Chapter XIV A of K.E.R and were appointed as Headmasters and scale of pay attached to that post was also granted to them w.e.f. 1/2/91 and 1/12/90 respectively.

2. It is submitted that subsequently following the judgment of this court in Exhibit P9, the Government of Kerala issued Exhibit P4 order dated 4.6.99. In Exhibit P4, it was ordered that all those teachers who were appointed as Aided primary school Headmasters till 15/9/88 will be granted the scale of pay sanctioned in the Government order dated 24.4.73 from the date of their appointment to the said post. Obviously, the petitioners, having come to the Headmasters cadre in 91 and 90 respectively were hit by the cut off date period prescribed in Exhibit P4 and were not given Head Masters salary with effect from 16/2/87 and 1/6/87, when they were initially appointed. They had taken up their grievance with the Government which was considered and by Exhibit P6 order, their claims were

negatived. It is stated in Exhibit P6 that on acquiring the prescribed test qualification, the petitioners 2 and 3 were promoted as Headmasters with effect from 1/2/91 and 1/12/90 and therefore they do not come within the purview of Exhibit P4.

3. It is the submission of the counsel for the petitioners that they are entitled to the scale of pay attached to the post of Headmaster effective from 16/2/87 and 1/6/87 respectively, for the reason that they were appointed to that post. According to the counsel, Ext.P4 only says "appointed to the post" and for determining their entitlement, the subsequent developments are of no consequence. However, the fact remains that the 2nd petitioner was reverted and his approved service is only as Teacher in charge. Similar is the case with the 3rd petitioner, who also has approved service only as Teacher in Charge. Therefore the initial appointment as Head Master will not confer on them any benefit, muchless under Ext.P4. In this behalf, the counsel for the petitioners seeks to rely on Exhibits P7 and P8

Government orders. Exhibits P7 and P8 would show that the Government ordered that the Headmasters who hold the post will continue in that category without being reverted. This also does not advance the case of the petitioners for two reasons. One is that the petitioners were not Head Masters and secondly by the time Ext.P4 was issued, they were already working as Teachers in charge.

4. I am not able to accept the above contention of the counsel for the petitioners for the reason that, in my view, Exhibits P7 and P8 are inapplicable in so far as the petitioners are concerned. Exhibits P7 and P8 only deal with the case of persons who were holding the post of Headmasters despite the fact that they were not test qualified. In so far as the petitioners are concerned, although they were appointed as Headmasters effective from 16/2/87 and 1/6/87, their appointments were not approved by the department and they continued in service only as teacher in charge. In this position they continued till 1.2.1991

and 1.12.90 when they were made Headmasters with the scale of pay attached to that post subsequent to acquisition of test qualification, an essential qualification, prescribed under Rule 45 (B) Chapter XIV of the K.E.R. Therefore, Exhibits P7 and P8 does not come to their rescue. Therefore until and unless the approval granted to the petitioners as teacher in charge way back in 1987 is held to be bad, they cannot claim the benefit of anything other than the post of teacher in charge. At this distance of time, it is not only that it is not possible, but also that such a relief is not sought for by the petitioners. Since the petitioners were not appointed as Headmasters prior to 15/9/88, they stand outside the scope of Exhibit P4. Such being the case, petitioners cannot claim monetary benefit attached to the post of Head Master prior to 1.2.91 and 1.12.90 respectively.

5. According to the petitioners, though as teacher in charge, they were discharging the duties of Headmasters and since as per the K.E.R, Headmaster includes the teacher in

charge, they are entitled to be granted the benefit of the scale of pay attached to the post of Headmaster from the respective dates from which they were initially appointed in 1987. This plea is more in the nature of a claim for equal pay for equal work. For taking cognizance of such a contention and to render a decision thereon, satisfactory materials are required to be made available. In this case, such materials are absent and even pleadings in this respect are lacking. Hence, I am not in position to accept this contention either.

Accordingly, I do not find any merit in the contentions raised and the writ petition is dismissed without any order as to costs.

ANTONY DOMINIC, JUDGE

Rp